

05-662 Nov 18 2005

No. 05- OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

RUEL D. LATOJA,

Petitioner.

v.

CARNIVAL CORPORATION, d/b/a
CARNIVAL CRUISE LINES, INC.,

Respondent.

**ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the Federal Arbitration Act, 9 U.S.C. Ch. 1, § 1, "Exception to Title" exclusion of seamen's employment contracts from arbitration apply to 9 U.S.C. Ch. 2, § 202, excluding foreign seamen's employment contracts from arbitration under the Convention on the Recognition and Enforcement of Arbitral Awards and the Convention Act, 9 U.S.C. §§ 201-208?

TABLE OF CONTENTS

	<i>Page</i>
Question Presented	i
Table of Contents	ii
Table of Cited Authorities	iii
Table of Appendices	vi
Opinions Below	1
Statement of Jurisdiction	2
Statutory Provisions Involved	2
Statement	6
Reasons for Granting the Petition	8
Conclusion	15

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES	
<i>Bautista v. Star Cruises</i> , 396 F.3d 1289 (11th Cir.), <i>cert. dismissed</i> 125 S. Ct. 2954 (2005) <i>passim</i>	
<i>Bautista v. Star Cruises</i> , 286 F. Supp. 2d 1352 (S.D. Fla. 2003)	11
<i>Circuit City Stores, Inc. v. Adams</i> , 532 U.S. 105 (2001)	10
<i>Francisco v. Stolt Achievement MT</i> , 293 F.3d 270 (5th Cir. 2002), <i>cert. denied</i> , 537 U.S. 1030 (2002)	9, 10, 11
<i>Garrett v. Moore-McCormack Co.</i> , 317 U.S. 239 (1942)	15
<i>Harden v. Gordon</i> , 11 F. Cas. 480 (No. 6047) (C.C. D. Me. 1823)	14
<i>Hellenic Lines, Ltd. v. Rhoditis</i> , 398 U.S. 306 (1970)	15
<i>Lauritzen v. Larsen</i> , 345 U.S. 571 (1953)	15
<i>Udall v. Tallman</i> , 380 U.S. 1 (1965)	13

Cited Authorities

	<i>Page</i>
STATUTES	
9 U.S.C. § 1	<i>passim</i>
9 U.S.C. § 201	i, 1, 8, 9
9 U.S.C. § 202	i, 1, 3, 12
9 U.S.C. § 203	i, 1, 3
9 U.S.C. § 204	i, 1, 4
9 U.S.C. § 205	i, 1, 4, 6
9 U.S.C. § 206	i, 1, 5
9 U.S.C. § 207	i, 1, 5
9 U.S.C. § 208	i, 1, 5, 11
28 U.S.C. § 1254(1)	2
28 U.S.C. § 1441, <i>et seq.</i>	6
46 U.S.C. App. § 688(a)	6, 13

Cited Authorities

	<i>Page</i>
OTHER	
Art. I, § 3 of the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards	9
Footnote 29 to the U.N. Convention on the Recognition and Enforcement of Foreign Arbitral Awards	9
S. Comm. On Foreign Relations, Foreign Arbitral Awards, S. Rep. No. 91-702 (1970)	13
Webster's Encyclopedic Unabridged Dictionary of the English Language, 428 (1996)	12

TABLE OF APPENDICES

	<i>Page</i>
Appendix A — Opinion of the United States Court of Appeals for the Eleventh Circuit Dated and Filed September 21, 2005	1a
Appendix B — Administrative Order Closing Case of the United States District Court for the Southern District of Florida Dated and Filed March 9, 2004	3a
Appendix C — Order of the United States District Court for the Southern District of Florida Granting Defendant's Motion to Compel Arbitration and Denying Plaintiff's Motion to Remand Dated March 3, 2004 and Filed March 4, 2004	5a
Appendix D — Opinion of the United States Court of Appeals for the Eleventh Circuit in <i>Bautista,</i> <i>et al. v. Star Cruises, et al.</i> Filed January 18, 2005	20a

Ruel D. Latoja, a Filipino seaman injured at sea while working aboard the *M/S Paradise*, a vessel owned and operated by Respondent Carnival Cruise Lines, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, which denied him his statutory and common law remedies historically afforded to maritime workers. The court below affirmed an Order of the district court compelling arbitration, relying on binding Circuit precedent, *Bautista v. Star Cruises*, 396 F.3d 1289 (11th Cir.), *pet. for cert. dismissed*, 125 S. Ct. 2954 (2005) (reprinted at App. D), which held that the Federal Arbitration Act "exception to title" exclusion of seamen's employment contracts from arbitration (9 U.S.C. Ch. 1, § 1) does not apply to foreign seamen's contracts under the Convention Act (9 U.S.C. Ch. 2, §§ 201-208), which implemented the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The decision, depriving petitioner and other foreign seamen of their federal Jones Act and other common law judicial remedies for maritime employment-related injuries, and relegating Petitioner to the limited economic relief available through arbitration in the Philippines, presents an important question of federal statutory construction warranting review by this Court.

OPINIONS BELOW

The decision of the United States Court of Appeals for the Eleventh Circuit is unreported, and is reprinted in the Appendix at App. A, 1a-2a. The final Order of the United States District Court for the Southern District of Florida, compelling arbitration, is also unreported, and is reprinted in the Appendix at App. C, 5a-19a. An administrative order of the District Court, closing the case, is reprinted at App. B,

3a-4a. As noted above, the *Bautista* decision of the Eleventh Circuit Court of Appeals is also included, at App. D, because it dictated the outcome of this case.

STATEMENT OF JURISDICTION

The opinion of the Eleventh Circuit Court of Appeals was issued on September 21, 2005. App. 1a-2a. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

9 U.S.C. Ch. 1, § 1 "Maritime transactions" and "commerce" defined; exceptions to operation of title

"Maritime transactions", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "commerce", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but *nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.* (emphasis supplied).

9 U.S.C. Ch. 2, § 202. Agreement or award falling under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

9 U.S.C. Ch. 2, § 203. Jurisdiction; amount in controversy

- An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

9 U.S.C. Ch. 2, § 204. Venue

An action or proceeding over which the district courts have jurisdiction pursuant to section 203 of this title may be brought in any such court in which save for the arbitration agreement an action or proceeding with respect to the controversy between the parties could be brought, or in such court for the district and division which embraces the place designated in the agreement as the place of arbitration if such place is within the United States.

9 U.S.C. Ch. 2, § 205. Removal of cases from State courts

Where the subject matter of an action or proceeding pending in a State court relates to an arbitration agreement or award falling under the Convention, the defendant or the defendants may, at any time before the trial thereof, remove such action or proceeding to the district court of the United States for the district and division embracing the place where the action or proceeding is pending. The procedure for removal of causes otherwise provided by law shall apply, except that the ground for removal provided in this section need not appear on the face of the complaint but may be shown in the petition for removal. For the purposes of Chapter 1 of this title any action or proceeding removed under this section shall be deemed to have been brought in the district court to which it is removed.

9 U.S.C. Ch. 2, § 206. Order to compel arbitration; appointment of arbitrators

A court having jurisdiction under this chapter may direct that arbitration be held in accordance with the agreement at any place therein provided for, whether that place is within or without the United States. Such court may also appoint arbitrators in accordance with the provisions of the agreement.

9 U.S.C. Ch. 2, § 207. Award of arbitrators; confirmation; jurisdiction; proceeding

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

9 U.S.C. Ch. 2, § 208. Chapter 1; residual application

Chapter 1 applies to actions and proceedings brought under this chapter to the extent that chapter is not in conflict with this chapter or the Convention as ratified by the United States.